Supreme Court, U.S.
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In The Supreme Court of the United States

JOSEPH ROSS, by his next friend and Conservator, Geneva Ross,

Petitioner,

v.

UNUM LIFE INSURANCE COMPANY OF AMERICA, a foreign corporation doing business in the State of West Virginia,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Richard E. Shaw
LOPATIN, MILLER, FREEDMAN, BLUESTONE, HERSKOVIC & DOMOL
3000 Town Center, Suite 1700
Southfield, Michigan 48075
(248) 213-3800

Counsel for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

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QUESTION PRESENTED

I. PETITIONER PRESENTED A PROOF OF LOSS, SUBMITTED TO AN INDEPENDENT MEDICAL EXAMINATION, AND RESPONDED APPROPRIATELY TO REQUESTS FOR INFORMATION. RESPONDENT TERMINATED BENEFITS PRIMARILY ON THE BASIS THAT THE INSURANCE POLICY WAS VOID DUE TO ALLEGED MISINFORMATION ABOUT PETITIONER'S INCOME AND SECONDARILY BECAUSE PETITIONER WAS ALLEGEDLY NOT DISABLED. PETITIONER PROVIDED ADDITIONAL INFORMATION, LEADING RESPONDENT TO REINSTATE THE DISABILITY BENEFITS.

DID THE COURT BELOW ERR IN HOLDING THAT PETITIONER FAILED TO FULFILL A CONDITION PRECEDENT WITH RESPECT TO THE CLAIMED BENEFITS DURING THE ONE-YEAR SUSPENSION?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit in *Joseph Ross Unum Life Insurance Company of America and Carson Insurance Agency, Incorporated* is unreported and is set forth in the Appendix hereto (App. A-1).

The Memorandum Opinion of the District Court for the Southern District of West Virginia in *Joseph Ross Unum Life Insurance Company of America and Carson Insurance Agency, Incorporated,* is unreported and is set forth in the Appendix hereto (App. A-4).

BASIS FOR JURISDICTION

The final judgment of the United States court of Appeals for the Fourth Circuit affirming the decision of the District Court of the Southern District of West Virginia was entered on March 30, 2000. This petition for writ of certiorari is filed within ninety (90) days from that date. 28 U.S.C. Section 2102(c).

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

None.

STATEMENT OF THE CASE

Petitioner, Mr. Joseph Ross (hereafter, Ross), obtained his disability income policy from Unum Life Insurance Company of America (hereafter, UNUM) on January 16, 1992. He was 38 years old and had finished only the 11th grade in high school. Nevertheless, he was employed as a heart pacemaker technician, averaging over $175,000.00 per year in this occupation. Ross' job involved driving approximately 400 to 600 miles a day and/or his flying his single engine aircraft that distance. He was constantly on call by various hospital operating rooms to help implant cardiac pacemakers in a patient while their chest was surgically open. Ross would make electrical calculations and measurements to ensure that the cardiac pacemaker was properly customized for each patient.

The disability insurance policy provided for payment of benefits if Ross became "totally disabled". It defined "totally disabled" as any "injury or sickness [that] restricts your ability to perform the material and substantial duties of your regular occupation to an extent that prevents you from engaging in your regular occupation." The policy further defined "regular occupation" as "your occupation at the time the elimination period begins. If you engage primarily in a

professionally recognized specialty at that time your occupation is that specialty." Petitioner contended that Ross' regular occupation was that of Cardiac Pacemaker Technician and that because he could not perform that job, he was totally disabled under the terms of the policy.

UNUM paid disability benefits under reservation of right to plaintiff from March, 1993, to December 13, 1993. On January 13, 1994, UNUM wrote to Ross and indicated that benefits would be terminated. The trial court characterized the letter as follows (Memorandum Opinion, App. A-16):

> Subsequent to Dr. Taylor's evaluation, Defendant . . . wrote plaintiff to advise that they were terminating payment of benefits. Said letter of January 13, 1994, advised Plaintiff that, pursuant to the terms of the policy, absent further proof of loss no further benefits would be paid.

However, the trial court's review did not fully reflect UNUM's letter terminating benefits. UNUM's letter recited two reasons for termination of benefits. Defendant first indicated that the insurance policy was void, because the statements of income were too high.

> Taking the information you have provided at face value for the purpose of discussion here, it appears you had earned income for personal services (after business expenses) for 1991 of $167,272.00 ($191,200.00 gross - $21,473.00

> expenses). Assuming this figure is correct, had UNUM been aware of the true amount you earned in 1991, it would not have issued policy number LAD176150 as it was applied for.
>
> Assuming, again, the facts noted above are correct, UNUM hereby contests the validity of your policy and declares its intent to rescind policy number LAD176150. The effect of the rescission is to restore both parties to the status quo before the policy was issued. You will be entitled to a full refund of premiums paid on the policy, UNUM will be entitled to a full refund of benefits paid to you to date, and the policy will become null and void.

UNUM's letter then indicated a second reason for termination of benefits. Defendant asserted that Ross was not eligible for disability benefits, because it found discrepancies with regard to his medical condition. As noted by the trial court, this portion of the letter concluded:

> Based on our review of all the information available to UNUM at this time, we are unable to conclude that you qualify for total disability benefits. Absent proof of loss sufficient to override the above noted discrepancies, no further benefits would be payable.

The UNUM letter ended with a "Summary," which clearly demonstrated that the primary reason for termination of benefits was that the policy was void. It said :

> As noted above, we do not currently have a sufficient basis to conclude that medically imposed restrictions and limitations caused by the auto accident prevent you from doing the material and substantial duties of your occupation. That problem is, however, overshadowed by our conclusion that you policy is invalid due to the misrepresentation of your income on your application.

UNUM discontinued payments from December 14, 1993, to December 13, 1994. Thereafter, UNUM reinstated payment of benefits from December 14, 1994, to the present.

Ross brought suit, alleging breach of contract and bad faith failure to pay disability insurance benefits during the period in question. Respondent, Unum Life Insurance Company of American (hereafter, Unum), moved for summary judgment,

The trial court granted UNUM's motion for summary judgment. It found that "Plaintiff cannot show that he fulfilled the requirements of the policy during the period where Defendants denied Plaintiff disability payments." (Memorandum Opinion, App. A-20) The court held that Ross failed to fulfill a condition precedent of the insurance policy. (Memorandum Opinion, App. A-17- A-20)

The lower court found that the insurance policy required the following steps:

1. give notice of Claim . . .;

2. file proof of loss . . .;

3. promptly complete and return any other forms we require; and

4. you undergo a medical examination by a specialist appropriate for the condition or a personal interview as often as we reasonably request while the claim is pending. We reserve the right to select the examiner. We will pay for the examination.

We will evaluate the claim and either:

1. pay the benefits specified in the policy; or

2. notify you and any Loss Payee that benefits are not payable and why. If we need more information, we will tell you and any Loss Payee what we need.

(Memorandum Opinion, App. A-5)

The trial court concluded, "Plaintiff failed to provide Defendant any additional documentation until nearly 11 months after the letter of denial was received." For this reason, the court concluded that petitioner failed to comply with a condition precedent.

The United States Court of Appeals for the Fourth Circuit affirmed the district court.

REASONS FOR GRANTING THE WRIT.

THE DECISIONS BELOW REFLECT A FUNDAMENTAL MISUNDERSTANDING OF THE CONTRACTUAL REQUIREMENT REGARDING THE "PROOF OF LOSS."

Initially, plaintiff observes that the trial court was obliged to give the benefit of the doubt to the opponent of the motion for summary judgment. The moving party must show that there are no genuine issues as to any material of fact and that the movant is entitled to such judgment as a matter of law. Collard v. Smith Newspapers, Inc., 915 F.Supp.805 (S.D.W.Va., 1996). If there is any doubt as to the existence of a genuine issue of fact, that doubt must be resolved against the party moving for summary judgment. International Union, Dist. 50 UMW v. Matthiessen & Heaeler, Zinc Co., 291 F.Supp. 578 (N.D.W.Va.,1968)

Here, the trial court's decision is without basis.

The trial court examined the insurance policy and focused on the plaintiff's duty to provide information to the defendant insurance company. The lower court found that the insurance policy required the following steps:

1. give notice of Claim . . .;

2. file proof of loss . . .;

3. promptly complete and return any other forms we require;

and

4. you undergo a medical examination by a specialist appropriate for the condition or a personal interview as often as we reasonably request while the claim is pending. We reserve the right to select the examiner. We will pay for the examination.

We will evaluate the claim and either:

1. pay the benefits specified in the policy; or

2. notify you and any Loss Payee that benefits are not payable and why. If we need more information, we will tell you and any Loss Payee what we need.

(Memorandum Opinion, App. A-5)

From this review of the insurance policy, the trial court drew the conclusion that, upon defendant's termination of benefits, plaintiff should have provided more information to defendant. The trial court's conclusion cannot survive scrutiny.

First, UNUM informed Ross that the insurance policy was void. Manifestly, there was no information that Ross could have provided to UNUM concerning his medical condition that had any bearing on UNUM's determination that the policy was void. Therefore, it was illogical to hold that plaintiff was obliged to forward additional proof of law to UNUM after the January 13, 1994 letter.

Even assuming (contrary to fact) that UNUM had terminated insurance payments solely because it concluded that Ross was not impaired, the trial court's analysis is flawed. UNUM terminated benefits. It did not request further proof of loss, or return of forms, or submission to a medical examination or interview, or request more information.

The trial court effectively held that Ross was mandated to guess that the insurance carrier wanted additional information and to further guess what information would prove persuasive, despite the fact that the claim had been denied. After the termination of benefits, Ross' counsel presented more information to UNUM, presumably in the hope of reinstatement of benefits and/or payment of past due benefits. Surely, it was appropriate for Ross' counsel to present additional information to UNUM. Unquestionably, this additional information cannot preclude the suit, based on the contention that it should have been presented earlier. Plaintiff vigorously submits that he complied with the claim procedures described in the policy. The trial court's conclusion to the contrary was simply wrong.

The trial court confused and intermingled two distinct counts: (1) breach of contract, and (2) bad faith failure to pay a claim. (Memorandum Opinion, App. A-22) This is

shown by the trial court's perception of plaintiff's theory of liability. The court observed:

> Plaintiff failed to provide Defendant any additional documentation until nearly 11 months after the letter of denial was received. At such time as Defendant received the additional documentation, payments were resumed and have continued to date.
>
> Plaintiff assumedly [emphasis added] contends that, based upon the medical records available prior to January of 1994, Defendant could not reasonably dispute the severity of Plaintiff's disability. The Court finds that based upon Dr. Taylor's evaluation alone Defendant had reason to question Plaintiff's claim.

(Memorandum Opinion, App. A-18)

For Count I, breach of contract, petitioner did not contend, and was not required to contend, that respondent "could not reasonably dispute the severity of Plaintiff's disability." Petitioner alleges (and is required only to allege): (1) the existence of the disability policy; (2) Ross was disabled; (3) petitioner complied with all contractual requirements, particularly the proof of loss; (4) respondent denied the claim. See, Robbert v Equitable Life Assur. Soc. of United States (On Reh), 217 La. 325,46 So.2d 286 (1950), Sargent v Holland, 114 F.3d 33 (1997), Combined Ins. Co. of America, 510 SW2d 120 (Tex. Ct. of Civil Appeals,

1974). There is no basis for the trial court's holding, in logic or in legal precedent, that petitioner must prove that respondent unreasonably denied the claim.

Predicated upon its erroneous perception of the elements of petitioner's claim, the trial court found "that several factors may reasonably have caused UNUM to question the nature of Ross' impairment . . . ." (Id., p. 12; App. 191) However, for Court I, it is entirely irrelevant whether there were one, several, or many factors that could have reasonably caused UNUM to challenge the claim. The trial court reversibly erred, as did the appellate court below. The order of summary judgment must be reversed.

CONCLUSION

WHEREFORE, petitioner herein, JOSEPH ROSS, by his next friend and Conservator, GENEVA ROSS, by and through LOPATIN, MILLER, FREEDMAN, BLUESTONE, HERSKOVIC & DOMOL, respectfully prays that this Honorable Court grant his Petition for Certiorari to the United State Court of Appeals for the Fourth Circuit.

Respectfully submitted,

By: Richard E. Shaw
Lopatin, Miller, Freedman, Bluestone,
Herskovic & Domol
3000 Town Center, Suite 1700
Southfield, Michigan 48075
(248) 213-3800